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WON, MICHAEL YOUNG	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/782,083	RAO, BINDU RAMA	
	Examiner	Art Unit	
	MICHAEL Y. WON	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 May 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21 and 23-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21 and 23-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the amendment filed May 5, 2008.

2. Claims 1, 13, 19 and 42 have been amended and claim 22 has been cancelled.

3. Claims 1-21 and 23-44 have been examined and are pending with this action.

4. The rejection of claims 1, 13, 19, and 42 under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language, has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 3-6, 8-11, 19-21, 23-31, 35-36, 38, and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boivie et al. (US 6,842,783) in view of Peart (US 6,952,714).

INDEPENDENT:

As per **claim 1**, Boivie teaches a method of managing incoming access requests during an update event from a plurality of electronic devices in a communication network, each of the incoming access requests comprising at least one update-related parameter, the method comprising:

receiving each incoming access request at least temporarily (see col.5, lines 20-21: "requests arrive at a Communication Bandwidth Manager (CBM) 110");

determining the availability of at least one device server to process the incoming access requests (see col.5, lines 25-28: "selects on of the servers 101"; and col.6, lines 28-30: "selects a Web server node 101 (e.g. based on a determination made by a conventional load balancer or the like which selects one node over another) to service the request");

immediately processing incoming access requests upon determining that the at least one device server is available (see col.5, lines 29-31: "The selected server receives the Web request, services it… "); and

communicating at least one message to electronic devices requesting access upon determining that the at least one device server is unavailable (see col.6, lines 47-50: "return a message to the Web client 130 that the server complex is overloaded").

Boivie does not explicitly teach monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter.

Peart teaches monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at

least one update-related parameter (see col.29, lines 55-58: "request typically includes parameters that identifies the selected data file on the web server").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter. One would be motivated to do so because this would allow the request to reach the appropriate destination to be serviced.

As per **claim 19**, Boivie teaches an electronic device network adapted to manage incoming access requests during an update event, each of the incoming access requests comprising at least one update-related parameter, the electronic device network comprising:

at least one electronic device having one of software and firmware, the electronic device being adapted to be communicatively coupled to the electronic device network (see Fig.1);

an access control unit (see Fig.3 and col.7, lines 1-7);

at least one device server operatively coupled to the access control unit (see Fig.1); and

a memory operatively coupled to the at least one device server (see col.5, lines 44-47), wherein the access control unit is adapted to immediately process and manage incoming information access requests from the at least one electronic device (see

col.25-28 and col.7, lines 10-17: "… and determines the server node 011 to service the request"), wherein the access control unit is adapted to determine an incoming access request volume at the at least one device server and ability of the at least one device server to service additional incoming access requests (see col.5, lines 25-28: "selects on of the servers 101"; and col.6, lines 28-30: "selects a Web server node 101 (e.g. based on a determination made by a conventional load balancer or the like which selects one node over another) to service the request").

Boivie does not explicitly teach that the electronic device is a mobile device.

Peart teaches of a mobile device (see col.4, lines 29-32: "wireless device")

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart so that electronic device is a mobile device. One would be motivated to do so because mobile device are one of plurality of devices that request for service via the Web.

As per **claim 42**, Boivie teaches a method of managing incoming access requests during an update event from a plurality of electronic devices in a communication network, each of the incoming access requests comprising at least one selection-related parameter, the method comprising:

receiving each incoming access request at least temporarily (see col.5, lines 20-21: "requests arrive at a Communication Bandwidth Manager (CBM) 110");

determining whether the incoming access requests is able to be processed (see col.5, lines 25-28: "selects on of the servers 101"; and col.6, lines 28-30: "selects a Web

server node 101 (e.g. based on a determination made by a conventional load balancer or the like which selects one node over another) to service the request");

immediately processing incoming access requests upon determining that processing the incoming access request is likely to be successful (see col.5, lines 29-31: "The selected server receives the Web request, services it… "); and

communicating at least one message to the electronic device requesting access upon determining that processing the incoming access request is unlikely to be successful (see col.6, lines 47-50: "return a message to the Web client 130 that the server complex is overloaded").

Boivie does not explicitly teach monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter.

Peart teaches monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter (see col.29, lines 55-58: "request typically includes parameters that identifies the selected data file on the web server").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing monitoring and evaluating the incoming access requests using the at least one update-related parameter wherein determining step is based upon the at least one update-related parameter. One would be motivated to do so because this would allow the request to reach the appropriate destination to be serviced.

DEPENDENT:

As per **claim 3**, which depends on claim 1, Boivie further teaches wherein the at least one update-related parameter comprises at least one of device identification information, firmware identification information, software identification information, and information regarding other resources available in the electronic device (see col.4, lines 42-44).

As per **claim 4**, which depends on claim 1, Boivie further teaches wherein the at least one message comprises a denial of service message (see col.6, lines 47-56).

As per **claim 5**, which depends on claim 4, Boivie further teaches wherein the denial of service message comprises at least one reason for service denial (see col.6, lines 47-56).

As per **claim 6**, which depends on claim 1, Boivie further teaches wherein determining the availability of the at least one device server to process the incoming access requests comprises evaluating at least one of an expected volume of requests, collected statistical information, user profile, request profile, and heuristics (see col.7, lines 10-17).

As per **claim 8**, which depends on claim 1, Boivie further teaches wherein monitoring and evaluating the incoming access requests further comprises periodically retrieving a status information communication from one of the at least one device server and at least one of the plurality of electronic devices (see col.6, lines 15-19).

As per **claim 9**, which depends on claim 1, Boivie further teaches wherein monitoring and evaluating the incoming access requests further comprises monitoring at least one network resource, operational status of the at least one device server, a volume of incoming access requests, and information regarding at least one of the plurality of electronic devices (see col.6, line 15-19).

As per **claim 10**, which depends on claim 1, Boivie teaches comprising selecting a candidate device server to process an incoming access request based upon monitored information regarding the at least one device server (see col.6, lines 20-32).

As per **claims 11 and 20**, which respectively depend on claims 1 and 20, Boivie does not explicitly teach wherein the at least one electronic device comprises a plurality of mobile electronic devices, and wherein the plurality of mobile electronic devices comprise at least one of a mobile cellular phone handset, personal digital assistant, pager, MP3 player, and a digital camera.

Peart teaches of a mobile device (see col.4, lines 29-32: “wireless device”)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart so that electronic device is a mobile device. One would be motivated to do so because mobile device are one of plurality of devices that request for service via the Web.

As per **claim 21**, which depends on claim 19, Boivie does not explicitly teach wherein the at least one device server comprises a plurality of device servers adapted to dispense updates to a plurality of update requesting electronic devices.

Peart teaches a plurality of device servers adapted to dispense updates to a plurality of update requesting electronic devices (see col.21, lines 20-24).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing a plurality of device servers adapted to dispense updates to a plurality of update requesting electronic devices. One would be motivated to do so because software updates are one or plurality of services provided by Web server.

As per **claim 23**, which depends on claim 19, Boivie further teaches further comprising a monitoring unit adapted to monitor activity of the at least one device server (see col.6, lines 20-32).

As per **claim 24**, which depends on claim 19, although Boivie further teaches a memory, Boivie does not explicitly teach comprising a plurality of updates retrievable by the at least one device server.

Peart teaches a plurality of updates retrievable by the at least one device server (see col.21, lines 20-24).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Peart by implementing a plurality of updates retrievable by the at least one device server. One would be motivated to do so because software updates are one or plurality of services provided by Web server.

As per **claim 25**, which depends on claim 19, Peart further teaches wherein the at least one mobile electronic device comprises random access memory and non-

volatile memory, and wherein the non-volatile memory comprises at least one of an update application loader, update agent, download agent, and an operating system (inherency).

As per **claim 26**, which depends on claim 19, Boivie further teaches wherein an incoming access request comprises at least one of device identification information, firmware identification information, software version information, and resource availability information (see col.4, lines 42-44).

As per **claim 27**, which depends on claim 19, Boivie further teaches wherein the access control unit is adapted to determine priority of an incoming access request by recognizing that the incoming access request is one of a repeated and rescheduled access request (see col.4, lines 40-41 and col.5, lines 44-57).

As per **claim 28**, which depends on claim 19, Boivie further teaches wherein the access control unit is adapted to determine one of whether a particular incoming access request requires immediate processing, whether the incoming access request requires deferment, and whether the incoming access request requires denial based upon operational status information gathered by monitoring the at least one device server and by evaluating the incoming access request (see col.5, lines 44-57).

As per **claim 29**, which depends on claim 28, Boivie further teaches wherein upon determining that the incoming access request requires denial, the access control unit communicates at least one message to the mobile electronic device (see col.6, lines 47-56).

As per **claim 30**, which depends on claim 29, Boivie further teaches wherein the at least one message to the mobile electronic device comprises a denial of service message (see col.6, lines 47-56).

As per **claim 31**, which depends on claim 29, Boivie further teaches wherein the at least one message to the mobile electronic device comprises at least one reason for service denial (see col.6, lines 47-56).

As per **claim 35**, which depends on claim 29, Boivie further teaches wherein a rescheduled request is rapidly advanced in the processing queue (see col.4, lines 40-41).

As per **claim 36**, which depends on claim 28, Boivie further teaches wherein upon determining that the incoming access request requires denial, a denial of service message is displayed at the mobile electronic device (see col.6, lines 47-56).

As per **claim 38**, which depends on claim 27, Boivie further teaches wherein the access control unit is adapted to at least briefly accept all incoming communications (implicit: see col.6, lines 8-11).

As per **claim 40**, which depends on claim 19, Boivie and Peart further teach wherein the mobile electronic devices are adapted to one of: repeat denied access requests without end-user intervention (see col.6, lines 63-64); prompt an end-user to initiate repeated access requests; display alternative schedules communicated to the mobile electronic device; prompt the end-user to select a particular alternative schedule; and autonomously repeat the access request according to a selected alternative schedule.

As per **claim 41**, which depends on claim 19, Boivie further teaches wherein the at least one update-related parameter comprises at least one of device identification information, firmware identification information, software identification information, and information regarding other resources available in the electronic device (see col.4, lines 42-44).

As per **claim 43**, which depends on claim 42, Boivie further teaches wherein the at least one message communicated to electronic device comprises schedule information useable by the electronic device to re-attempt access employing another incoming access request (see col.6, lines 63-64).

6. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boivie et al. (US 6,842,783) in view of Vogl et al. (US 6,959,327).

As per **claim 13**, Boivie teaches a method of managing incoming access requests during an update event from a plurality of electronic devices in a mobile electronic network, the method comprising:

recognizing that an incoming access request is a access request (see col.5, lines 20-28); and

fulfilling the access request with higher priority than an original request (subjective: see col.4, lines 40-41: “incoming requests are served by priority” and col.5, lines 44-57).

Boivie does not explicitly teach evaluating the incoming access requests, the incoming access requests at least comprising at least one update-related parameter and wherein the request is a rescheduled access request.

Vogl teaches evaluating the incoming access requests, the incoming access requests at least comprising at least one update-related parameter (see Fig.7 and col.15, line 63- col.16, line 2: "which instructs the schedule architecture 800 to retrieve…") and wherein the request is a rescheduled access request (see col.15, lines 17-22).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Vogl by implementing evaluating the incoming access requests, the incoming access requests at least comprising at least one update-related parameter and wherein the request is a rescheduled access request. One would be motivated to do so because this would allow the request to reach the appropriate destination to be serviced and allow requests to be received when system can efficiently handle the request.

As per **claim 14**, which depends on claim 13, Boivie further teaches wherein the rescheduled access request is an incoming access request that was previously denied (see col.47-56).

As per **claim 15**, which depends on claim 13, Boivie further teaches wherein fulfilling the rescheduled access request with higher priority than an original request comprises advancing the rescheduled request in a processing queue (see col.4, lines 40-41).

As per **claim 16**, which depends on claim 13, Boivie further teaches wherein fulfilling the rescheduled access request with higher priority than an original request comprises immediately placing the rescheduled request in the processing queue (see col.5, lines 44-57).

As per **claim 17**, which depends on claim 13, Boivie does not explicitly teach wherein the at least one mobile electronic device comprises a plurality of electronic devices, and wherein the plurality of electronic devices comprise at least one of a mobile cellular phone handset, personal digital assistant, pager, MP3 player, and a digital camera.

Vogl teaches of a mobile device (implicit: see col.6, lines 27-33: "wireless networks")

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie in view of Vogl so that electronic device is a mobile device. One would be motivated to do so because mobile device are one of plurality of devices that request for service via the Web.

As per **claim 18**, which depends on claim 13, Boivie further teaches wherein the at least one update-related parameter comprises at least one of device identification information, firmware identification information, software identification information, and information regarding other resources available in the electronic device (see col.4, lines 42-44).

7. Claims 2, 7, 12, 32-43, 37, 39 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boivie et al. (US 6,842,783) and Peart (US 6,952,714), and still further in view of Vogl et al. (US 6,959,327).

As per **claim 2**, which depends on claim 1, Boivie and Peart do not explicitly teach wherein communicating comprises determining at least one alternate schedule for the electronic device to send a rescheduled access request upon determining that the at least one device server is unavailable for processing, based upon the at least one update-related parameter.

Vogl teaches determining at least one alternate schedule for the electronic device to send a rescheduled access request upon determining that the at least one device server is unavailable for processing (see col.3, lines 22-25), based upon the at least one update-related parameter (see Fig.7 and col.15, line 63- col.16, line 2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie and Peart in view of Vogl by implementing determining at least one alternate schedule for the electronic device to send a rescheduled access request upon determining that the at least one device server is unavailable for processing. One would be motivated to do so because this would notify the electronic device submit a request when system can efficiently handle the request.

As per **claim 7**, which depends on claim 1, although Boivie teaches an explanatory denial of service message (see col.6, lines 50-52), Boivie and Peart do not explicitly teach further comprising graceful communication termination, wherein graceful

communication termination comprises communicating an alternate schedule to send a rescheduled access request.

Vogl teaches communicating an alternate schedule to send a rescheduled access request (see claim 2 rejection above)

As per **claim 12**, which depends on claim 1, Boivie and Peart do not explicitly teach wherein the at least one message comprises alternate schedule information, wherein the alternate schedule information comprises at least one of a time to re-submit an access request, a particularly time frame for re-submitting an access request, an amount of time that must elapse before re-submitting and access request, and a particular date for re-submitting an access request.

Vogl teaches an alternate schedule information comprises at least one of a time to re-submit an access request, a particularly time frame for re-submitting an access request, an amount of time that must elapse before re-submitting and access request, and a particular date for re-submitting an access request (see claim 2 rejection above).

As per **claim 32**, which depends on claim 29, Boivie and Peart do not explicitly teach wherein upon determining that the incoming access request requires denial, the access control unit is adapted to determine at least one alternate schedule for the mobile electronic device to send a rescheduled access request.

Vogl teaches upon determining that the incoming access request requires denial, the access control unit is adapted to determine at least one alternate schedule for the mobile electronic device to send a rescheduled access request (see claim 2 rejection above).

As per **claim 33**, which depends on claim 29, Boivie and Peart do not explicitly teach wherein upon determining that the incoming access request requires denial, the access control unit is adapted to communicate at least one alternate schedule to the mobile electronic device along with the at least one message.

Vogl teaches upon determining that the incoming access request requires denial, the access control unit is adapted to communicate at least one alternate schedule to the mobile electronic device along with the at least one message (see claim 2 rejection above).

As per **claim 34**, which depends on claim 29, although Boivie and Peart teaches the rescheduled access request is determined to have higher priority than an original incoming access request, and wherein the rescheduled access request is one of immediately placed in the processing queue and advanced in the processing queue (subjective see claim 13 rejection above), Boivie and Peart do not explicitly teach wherein a rescheduled access request is an incoming access request that was previously denied service.

Vogl teaches wherein a rescheduled access request is an incoming access request that was previously denied service (see claim 2 rejection above).

As per **claim 37**, which depends on claim 28, Boivie and Peart does not explicitly teach wherein upon determining that the incoming access request requires denial, a message comprising instructions for re-attempting the denied access request at one of a specific time and after a period of time has elapsed and an explanatory message is displayed at the mobile electronic device.

Vogl teaches wherein upon determining that the incoming access request requires denial, a message comprising instructions for re-attempting the denied access request at one of a specific time and after a period of time has elapsed (see col.3, lines 9-10) and an explanatory message is displayed at the mobile electronic device (see col.7, lines 19-23).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Boivie and Peart in view of Vogl by implementing wherein upon determining that the incoming access request requires denial, a message comprising instructions for re-attempting the denied access request at one of a specific time and after a period of time has elapsed and an explanatory message is displayed at the mobile electronic device. One would be motivated to do so because Boivie teaches that by default browsers will retransmit requests when the browser cannot obtain a response. Therefore, by implementing such means, the control is given to the user and/or electronic device.

As per **claim 39**, which depends on claim 19, although Boivie and Peart teach further comprising a monitoring unit, the monitoring unit being adapted to gracefully manage denial of service for incoming access requests by: monitoring a volume of incoming access requests (see col.5, lines 22-28); determining device server availability (see col.6, lines 47-56); and providing monitored information to the access control unit (see col.6, lines 1-19), Boivie and Peart do not teach determining alternative schedules for mobile electronic devices to re-attempt access requests; and communicating the alternative schedules to the mobile electronic devices.

Vogl teaches determining alternative schedules for mobile electronic devices to re-attempt access requests; and communicating the alternative schedules to the mobile electronic devices (see claim 2 rejection above).

As per **claim 44**, which depends on claim 42, Boivie and Peart does not explicitly teach wherein the at least one message communicated to electronic device comprises a schedule information indicating a time when the communication network is likely to be able to provide one of requested information and data to the electronic device.

Vogl teaches wherein the at least one message communicated to electronic device comprises a schedule information indicating a time when the communication network is likely to be able to provide one of requested information and data to the electronic device (see claim 2 rejection above).

Response to Arguments

8. Applicant's arguments filed May 5, 2008 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

1971). Clearly, one of ordinary skill in the art would incorporate processing any parameter in the incoming request such that the request can be directed to the appropriate server to service the request via a response.

In response to the argument regarding claims 1 and 42, that Boivie does not teach or suggest "determining the availability of at least one device server", such means is clearly inherent according to the teachings of Boivie. Boivie teaches throughout the invention that the invention guarantee and deliver according to Service Level Agreements (see col.3, lines 6-12) and further adds "selectively dropping requests to the customers to guarantee the agreed service levels to the customers" (see col.3, lines 62-67). Therefore, when Boivie teaches selecting one of the servers (see col.5, lines 25-30 and col.6, lines 28-32), it is inherent that the availability of the server is determined such that the SLA is maintained. Boivie is clearly not selecting servers to requests at random as suggested by the applicant(s) when one of ordinary skill in the art would concur such means would defeat the purpose of guaranteeing bandwidth in SLAs to customers. Furthermore, Boivie teaches that the determination and selection means is according to a load balancer or the like (see col.6, lines 28-30).

In response to the argument that Boivie does not teach "immediately processing the incoming access request upon determining that the at least one device server is available", since it has been shown above that Boivie clearly teaches "determining that the at least one device server is available" (see above), this limitation is clearly taught according to the citations above.

In response to the argument that Peart does not teach or suggest the "determining step", Peart is not relied upon to teach this step because Boivie clearly teaches this step.

The applicant(s) seam to be arguing that because the claims are not explicitly recited in the references word for word that such functionality is not taught. Not only is the determining step according to the teachings of Boivie inherent, but Boivie clearly and explicitly teaches this functionality. Boivie teaches that the determination and selection means is according to a load balancer or the like (see col.6, lines 28-30).

In response to the arguments of amended claim 19, see response to arguments of claim 1 above.

In response to the argument with regards to claims 27 and 13, additional citations have been provided to clearly teach the limitations. Boivie teaches that each traffic type has class and priority and is placed into a predetermined queue (see col.5, lines 44-57). Therefore, Boivie teaches that the requests are recognized and prioritized accordingly. The subjective nature of the type of request (i.e. repeated or rescheduled) does not change the functionality and therefore will not distinguish the invention in terms of patentability.

In response to the argument with regards to claim 15, again the teachings above according to the response to argument of claims 27 and 13, clearly show that Boivie teaches the order of the request is according to priority and not according to the order of arrival (sees col.4, lines 40-41). Furthermore, selection of the different queues is determined according to class and priority. Therefore, regardless of the type of request

the advancing or throttling of the request according to the priority will be performed. These differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

In response to claims 2, 7 and 12, it is inherent to one of ordinary skill in the art that when a request is rescheduled the schedule employed is altered.

Conclusion

7. For the reasons above, claims 1-21 and 23-44 have been rejected and remain pending.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Y. Won whose telephone number is 571-272-3993. The examiner can normally be reached on M-Th: 7AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Won/
Primary Examiner
July 7, 2008